No. 82-2112

In The
Supreme Court of the United States
October Term, 1983

RAMON RUIZ,

Petitioner,

vs.

CRISTO REY COMMUNITY CENTER, et al.,

Respondent.

PETITIONER'S REPLY BRIEF

THOMAS H. HAY
TIMOTHY A. O'ROURKE
Anderson, Hay & Wonch, P.C.

1300 North Waverly
Lansing, Michigan
Telephone: (517) 323-3000

Counsel for Petitioner

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

QUESTIONS PRESENTED

A. Has Respondent incorrectly inferred that Petitioner has entirely premised his argument upon the location of Petitioner when he was shot?

B. Has Respondent misapplied Michigan case authority relying upon a case which supports its own liability?

C. Has Respondent improperly attempted to prejudice the Court by making reference to alleged "reward", and/or "compensation"?

D. Whenever an individual is deprived of his right to a jury trial, or is otherwise the subject of injustice, is the case "sufficiently important to warrant this Court's attention"?

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Petitioner Ramon Ruiz respectfully offers this brief in reply to Respondent's Brief in Opposition, and once again prays this Court grant a Writ of Certiorari in the United States Sixth Circuit Court of Appeals.

A. Respondent has incorrectly inferred that Petitioner has entirely premised his argument upon the location of Petitioner when he was shot.

The only evidence produced at trial below places Petitioner outside the mobile classroom when he was shot. Respondent cites no evidence to the contrary. Instead, Respondent attempts to bind Petitioner to the unsworn allegations in his original Complaint filed before discovery; before trial; before jury verdict; and before the Sixth Circuit contrived "control of the threshold" as an operative fact.

As previously established, Petitioner Ramon Ruiz was an invitee of Respondent when he suffered his injuries. The jury returned a verdict finding Respondent negligent in failing to properly light the parking lot surrounding the mobile classroom unit. The jury further found that Respondent's negligence was the proximate cause of Petitioner's injuries. Respondent's entire defense is based upon alleged control of the mobile classroom unit by the Lansing School District. It is Respondent's talisman under which it magically seeks relief from liability for negligence. Ths is erroneous. It is not the location of Petitioner which is of importance, but the location of the assailant, who was lurking in the darkened parking lot. Respondent was responsible for the lighting and any other precautions required because of the high crime area. It is Respondent's control of the parking lot upon which this mobile unit sat, which mandates liability for Petitioner's injuries, regardless of whether Petitioner was inside or outside the mobile classroom unit.

As stated in Petitioner's Brief in Support of his Writ for Certiorari, control itself was a matter of fact for the jury. The use which Respondent made of the classroom, and the total control over the units very existence on its

parking lot supports the jury finding that Respondent was liable for its acts. Respondent clearly exercised control over the mobile classroom unit, as well as the parking lot upon which it stands. Even if this is not indisputable, it is certainly within the province of a jury to determine.

Petitioner further asserts that Respondent's "control" over the premises is not required. *Perry v. Hazel Park Harness Raceway*—cited in Petitioner's Brief, and totally ignored by Respondent,—stands for this proposition. The case arose out of a slip and fall, which occurred at Hazel Park Harness Raceway. The defendant argued that a motion for directed verdict should have been granted because the plaintiff had failed to establish defendant's control over the premises. The Michigan Court of Appeals stated:

> "The trial court's rulings were correct. A possessor of land is subject to liability for physical harm to invitees. (Citation omitted). There is no issue of "control" when the action is brought against the one in possession. That issue arises when the action is brought against someone other than the invitor-possessor, such as the landlord. (Extensive citations omitted). Plaintiffs presented evidence that defendant possessed the property in question." *Perry v. Hazel Park Harness Raceway,* —Mich. App. —, 332 N. W. 2d 601, 605 (Feb. 1983).

But despite Petitioner's burden, clearly the evidence in the instant case establishes Respondent's possession of the property. In addition to its location on Respondent's parking lot, the occasional occupancy of the mobile classroom unit by Respondent, as well as the total lack of any legal impediment to use of the property at any time Respondent chose, establishes Respondent's possession. More-

over, since Petitioner was Respondent's invitee, Respondent is liable pursuant to the jury verdict vacated by order of the Sixth Circuit.

B. Respondent has misapplied Michigan case authority, relying upon a case which supports its own liability.

Respondent cites *Escobar v. Brent General Hospital*, 106 Mich. App. 828, 308 N. W. 2d 691 (1981), in opposition to Petitioner's Writ of Certiorari. Petitioner is unable to understand how this case could conceivably be construed to deny liability in the instant case. *Escobar* is authority for liability found by the jury, regardless of Petitioner's location when he was shot.

Escobar involved an incident occurring in a high crime area. The defendant owned the property in question, and Mr. and Mrs. Escobar were their tenants. Upon returning from shopping one evening, Mrs. Escobar entered the rented premises with her child. Mr. Escobar was confronted by an unknown man who forced him into the house at gunpoint. At some point in time, the man attempted to sexually assault Mrs. Escobar, and a struggle ensued. Mrs. Escobar was shot during the struggle. Liability was denied by the Court.

Respondent would leave the impression that liability was denied because the injuries of the Escobar's occurred inside the house. That impression is beyond credulity. In fact, the Court of Appeals noted that the series of crimes involved began outside the plaintiff's home and further stated:

> "There is nothing in the record to suggest that the house was improperly maintained as was the apart-

> ment building in *Johnston v. Harris, supra,* or *that the home was not equipped with outside lights sufficient for residential purposes.* Further, in cases like like this we see no landlord duty to provide continuous security personnel as alleged by the plaintiffs. We thus find no error in the lower court's order granting defendant's motion for summary judgment." *Johnston v. Harris,* 387 Mich. 569, 198 N. W. 2d 409.

The Escobar Court specifically recognizes the cause of action for insufficient lighting which was the basis of Petitioner's cause of action. Petitioner alleged and proved to the jury's satisfaction that the parking lot in question was improperly maintained for its intended purposes. Thus, even if Petitioner's injuries occurred inside the mobile unit, Petitioner should recover if the injuries were caused by insufficient lighting outside the mobile unit.

C. Respondent has improperly attempted to prejudice the Court by making reference to alleged "reward", and/or "compensation".

In Respondent's Brief in Opposition to the Petition for a Writ of Certiorari, Respondent states:

> "It is also worthy of note that the record which was presented to the trial court and Court of Appeals shows that Petitioner was not exactly without reward. In fact, at the trial below, as the Joint Appendix excerpts indicate, he was provided with a scholarship to pay his tuition at Michigan State University from an anonymous donor, and a program was initiated to get money to pay his medical bills and expenses, and the money that was left over was given to him when he went back to Mexico. In addition, he had been given a new car, but after two years more of school, he left, and sold the car to buy a tractor." (Tr. 163-165, 170, 173) (sic) [Respondent's Brief in Opposition, pages 8

and 9, citing the Joint Appendix before the Sixth Circuit, pages 163-165, 170, 173.]

The clear implication of this paragraph is that Petitioner has received compensation for his injuries. In the context of this case that implication is scurrilous, to say nothing of its irrelevancy.

It is true that Petitioner was the beneficiary of a fund to pay his medical expenses. The publicity surrounding his injury, and its cause, presented a sympathetic picture to the community. What money was remaining in the fund when Ramon went back to Mexico was given to him. In addition, Ramon was given a new car.

With regard to the scholarship, other facts are evident. First, Ramon was given some English classes in East Lansing. Then Ramon was promised a scholarship available *outside of the United States.* Ramon returned to Mexico to attend the University of Chihuahua. He took two years of school in agricultural engineering. In fact, no money was ever received from any scholarships for these classes. Ramon testified that he was instructed to sell the car he was given, and this money was used both to pay for his classes and for a new tractor. The scholarship was cut off the moment Ramon left the State of Michigan. He specifically testified that he never received any scholarship after leaving the state of Michigan. (Joint Appendix 163-173). Petitioner asserts that this "veritable fortune" which Ramon obtained for the giving of an eye in his Samaritan efforts is irrelevant. Michigan law supports the jury verdict rendered in the U. S. District Court, and alleged "compensation" should not enter into this Court's consideration.

D. Whenever an individual is deprived of his right to a jury trial, or is otherwise the subject of injustice, the case is "sufficiently important to warrant this Court's attention".

Respondent states that the issues involved herein are "not sufficiently important to warrant the Court's attention". It is embarrassingly clear the Sixth Circuit's opinion was ordered not to be published. In all honesty, this is the strongest argument that Respondent has in favor of a denial of a Writ of Certiorari. Assuming an unpublished ruling of the Sixth Circuit has no impact upon any other individuals, there is little harm to come from the error save the injustice done to Ramon Ruiz. It is a sad but true commentary when individual injustice does not warrant the attention of the highest court in the land due to lack of time, thus permitting the subjugation of one human's dignity.

There can be no doubt that on occasion the Supreme Court must review cases which have little impact on the general rules of jurisprudence. The fact that Ramon Ruiz was deprived of a jury trial in this matter becomes significant if this Court does not review such decisions.

Respondent cites the Court of Appeals' limitation on this opinion that it was "not recommended for full text publication". Respondent further cites Sixth Circuit Court Rule 24(b) indicating that citation of unpublished decisions is disfavored. Respondent is actually indicating that any particular decision stating that it is not recommended for publication will preclude Supreme Court review. Petitioner respectfully suggests that allowing a lower Court to determine which of its opinions will be subject to re-

view by the simple recommendation that it not be published, would be contrary to the proper administration of justice. Adoption of such a principle as a general rule would make a travesty of this Court's constitutional mandate to review its inferior courts.

CONCLUSION

Respondent has failed to cite any authority that would justify the reversal of the jury verdict in this case. Michigan law clearly supports liability which was imposed by the jury. The Sixth Circuit Court of Appeals was clearly erroneous, and this Court should grant Petitioner's Writ of Certiorari.

It is true that the Sixth Circuit specifically stated that the opinion in this matter was not recommended for publication. The fact that its precedential value is limited should not preclude this Court's review. Petitioner suggests that interests of judicial economy and justice would be served by summarily reversing the decision of the Sixth Circuit Court of Appeals, upon granting the Writ of Certiorari.

Respectfully submitted,

THOMAS H. HAY
TIMOTHY A. O'ROURKE
Anderson, Hay & Wonch, P.C.

1300 North Waverly
Lansing, Michigan 48917
Telephone: (517) 323-3000

Counsel for Petitioner